



DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND  
1777 HARDEE AVENUE SW  
FORT MCPHERSON GEORGIA 30330-1062

REPLY TO  
ATTENTION OF

AFLG-PR

22 March 2002

MEMORANDUM FOR ALL FORSCOM DOCS

SUBJECT: Contracting Information Letter (CIL) 02-20

1. This CIL provides information on the following subjects:
  - a. Buy American Act and Berry Amendment Restrictions on the Procurement of Military Clothing and Related Items
  - b. Contractor Systems Support During Contingency Operations
  - c. National Institute for the Severely Handicapped (NISH) Overhead Charge in OMB A-76 Commercial Activities (CA) Studies
2. Buy American Act and the Berry Amendment. Reference memo, SAAL-PP, 14 February 2002, SAB (encl 1). Subject memorandum references information relating to the Buy American Act and Berry Amendment Restrictions on the procurement of military clothing and related items.
3. Contractor Systems Support During Contingency Operations. Reference memo, SAAL-PC, 28 January 2002, SAB (encl 2). Any contract with a likelihood of use outside the US contain appropriate deployment guidance, including specific contract clauses. The goal is to ensure that contractor personnel are prepared and available for rapid deployment should the occasion arise.
4. National institute for the Severely Handicapped (NISH) Overhead Charge in OMB A-76 Commercial Activities (CA) Studies. Reference memo, AFLG-PR (715-6a), undated, SAB (encl 3). NISH can participate in a CA Study either by direct conversion or by "head-to-head" cost comparison against the government's Most Efficient Organization (MEO) price.

3 Encls  
as

CHARLES J. GUTA  
Colonel, AC

Chief, Contracting Division, DCSLOG  
Principal Assistant Responsible  
for Contracting



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
ACQUISITION LOGISTICS AND TECHNOLOGY  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103



14 FEB 2002

REPLY TO  
ATTENTION OF

SAAL-PP

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Buy American Act and Berry Amendment Restrictions on the  
Procurement of Military Clothing and Related Items

The following references provide information relating to the Buy American Act and the Berry Amendment.

- a. Office of the Inspector General, Department of Defense (DoDIG) Report Number 99-023, Procurement of Military Clothing and Related Items by Military Organizations, October 29, 1998.
- b. The DoDIG Project No. D2001CH-0046 (draft), Buy American Act Issues on Procurements of Military Clothing, November 7, 2001.
- c. Title 41, United States Code (U.S.C.), Section 10a (and following sections), the Buy American Act.
- d. Public Law 107-107, National Defense Authorization Act for Fiscal Year 2002, December 28, 2001, specifically Section 832, Codification and Modification of Provision of Law Known as the "Berry Amendment," to be permanently codified as Title 10, United States Code (U.S.C.), Section 2533a (previously 10 U.S.C. Section 2241 note).
- e. Memorandum, Director, Defense Procurement, March 2, 1999, subject: Compliance with the Buy American Act and Other Statutory Restrictions on Foreign Acquisition (Enclosure 1).
- f. Memorandum, Deputy Secretary of Defense, May 1, 2001, subject: The Berry Amendment (Enclosure 2).


References a. and b. (DoDIG reports) have identified several Army violations of statutory restrictions on procurement of military clothing and related items. These restrictions come from reference c., the Buy American Act, as implemented by Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.1, and reference d., the Berry Amendment, as implemented by DFARS Subpart 225.7002.



It is imperative that Army solicitations and resulting contracts for military clothing and related items contain the required clauses and provisions. Furthermore, contracting officers are responsible for following all applicable law, regulation, and policy during source selection, award, and contract administration. The direction to all contracting officers contained in the reference e. memorandum (Enclosure 1) remains valid. Furthermore, the Army must comply with the procedures of the reference f. memorandum (Enclosure 2).

To properly address this continuing problem, increased emphasis must be placed on compliance with the Buy American Act and Berry Amendment as part of the contracting process. Future DoDIG reviews on the subject must show a marked improvement by Army procurement offices.

My point of contact is Mr. Charles Riley, commercial 703-681-6700; DSN 761-6700; or e-mail [charles.riley@saalt.army.mil](mailto:charles.riley@saalt.army.mil).

  
For Claude M. Bolton, Jr.  
Army Acquisition Executive

Enclosures

DISTRIBUTION:

PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING  
HQ, U.S. Army Materiel Command, ATTN: AMCRDA-AC (PARC),  
5001 Eisenhower Avenue, Alexandria, VA 22333-0001  
U.S. Army Aviation and Missile Command, ATTN: AMSAM-AC,  
Building 4488, Redstone Arsenal, AL 35898-5000  
U.S. Army Robert Morris Acquisition Center, ATTN: AMSSB-AC,  
4118 Susquehanna Avenue, Aberdeen Proving Ground, MD 21005-5002  
U.S. Army Communications-Electronics Command, ATTN: AMSEL-AC,  
Building 1208E, Fort Monmouth, NJ 07703-5000  
U.S. Army Operations Support Command, ATTN: AMSOS-CC, Building 350,  
5<sup>th</sup> Floor, NW Wing, Rock Island, IL 61299-6000  
U.S. Army Tank-automotive and Armaments Command, ATTN: AMSTA-AQ,  
Building 231, Warren, MI 48397-5000  
Defense Contracting Command-Washington, 5200 Army Pentagon,  
Washington, DC 20310-5200  
Headquarters Forces Command, ATTN: AFLG-PR, 1777 Hardee Avenue  
S.W., Fort McPherson, GA 30330-1062



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

March 2, 1999

ACQUISITION AND  
TECHNOLOGY

DP/EC

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT, ASN(RD&A)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT), ASA(RD&A)  
COMMANDER, DEFENSE CONTRACT MANAGEMENT COMMAND

SUBJECT: Compliance with the Buy American Act and Other Statutory  
Restrictions on Foreign Acquisition

I am concerned by the findings of the recent audit report by the Office of the Inspector General, DoD (OIG), Project No. BCH-5001, *Procurement of Military Clothing and Related Items by Military Organizations*, that concludes that certain Department of Defense procurements during Fiscal Years 1996 and 1997 did not comply with the requirements of the Buy American Act (41 U.S.C. 10a et seq.), implemented at Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 225.1, or the Berry Amendment (10 U.S.C. 2241, note), implemented at DFARS Subpart 225.7002. Nearly half of the solicitations and contracts examined by the OIG were found not to have incorporated or enforced the required relevant provisions or clauses prescribed by the DFARS for these statutes.

Please ensure that contracting officers review and comply with, the requirements of the Buy American Act and the Berry Amendment. Except as specifically provided in the Act or in DFARS Subpart 225.1, contracting officers must apply the requirements of the Buy American Act to supply contracts exceeding the micro-purchase threshold and to service contracts that involve furnishing of supplies when the supply portion exceeds the micro-purchase threshold. Except as specifically provided in the statute or DFARS Subpart 225.7002, contracting officers must apply the Berry Amendment to actions at or above the simplified acquisition threshold. These restrictions also apply to orders placed under a Federal Supply Schedule (FSS) contract. The General Services Administration (GSA) is not subject to the Berry Amendment and, therefore, does not impose the requirements of the Berry Amendment in a FSS contract. Contracting officers shall not place orders under an FSS contract if the procurement would fail to comply with either the Buy American Act or the Berry Amendment.

Eleanor R. Spector  
Director, Defense Procurement



ENCL 1



THE DEPUTY SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301-1000



MAY 1 2001

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR  
ACQUISITION, TECHNOLOGY AND LOGISTICS  
SECRETARY OF THE ARMY  
SECRETARY OF THE NAVY  
SECRETARY OF THE AIR FORCE

SUBJECT: The Berry Amendment

The Berry Amendment (10 U.S.C. 2241, note) provides in part that, "No part of any appropriation or other funds available to the Department of Defense, except for purchases for amounts not greater than the simplified acquisition threshold covered by section 2304(g) of Title 10 United States Code, shall be available for the procurement of any article or item of food, clothing, tents, tarpaulins, covers, cotton and other natural fiber products, woven silk or woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, or wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles), or any item of individual equipment manufactured from or containing such fibers, yarns, fabrics, or materials, or specialty metals including stainless steel flatware, or hand measuring tools, not grown, reprocessed, reused or produced in the United States or its possessions, except to the extent that the Secretary of the Department concerned shall determine that satisfactory quality and sufficient quantity of any articles or items of food, individual equipment, tents, tarpaulins, covers, or clothing or any form of cotton or other natural fiber products, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric or coated synthetic fabric, canvas products, wool, or specialty metals including stainless steel flatware, grown, reprocessed, reused, or produced in the United States or its possessions cannot be procured as and when needed at United States market prices and except procurements outside the United States in support of combat operations."

Effective immediately, your authority to make determinations in accordance with the Berry Amendment may not be redelegated. Any existing redelegations are hereby rescinded. Furthermore, prior to making any determination to waive the requirements of the Berry Amendment, you must present the requiring activity with alternatives that would not require a waiver under the Berry Amendment. Only after the requiring activity certifies, with specificity, in writing why such alternatives are unacceptable and you agree, may you make the necessary Berry Amendment determinations.

*Paul Wolfowitz*

ENCL 2



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
ACQUISITION LOGISTICS AND TECHNOLOGY  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103



28 JAN 2002

REPLY TO  
ATTENTION OF

SAAL-PC

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Contractor Systems Support During Contingency Operations.

The references listed below provide guidance for Army commands requiring contractor systems support during contingency operations:

- a. United States Army Combined Arms Support Command (CASCOM), Acquisition Liaison Office, study: Systems Contractor Support of 4th Infantry Division, August 1, 2001
- b. Army Regulation 715-9, Contractors Accompanying the Force, October 29, 1999.
- c. Field Manual 3-100.21, Contractors on the Battlefield, March 2000.
- d. Department of Defense (DoD) Acquisition Deskbook Supplement: Contractor Support in the Theater of Operations, (<http://web2.deskbook.osd.mil/data/001qzdoc.doc>).
- e. Department of the Army Pamphlet (DA PAM) 715-16, Procurement, Contractor Deployment Guide, February 27, 1998.
- f. AMC-P 715-18, Army Material Command (AMC) Contracts and Contractors Supporting Military Operations, June 2000.

As the Army continues to rely on contractors to provide logistics support for its weapons; Command, Control, Communications, and Computers (C4); and other support systems; issues and problems arise in which contracts are not being consistently structured to require contractor support for deployed operations. As a result, we must now put into place steps to immediately correct this deficiency in Army contracts. As a minimum, the following clauses shall be incorporated into your contracts when deployment of contractors are anticipated:

- 52.228-3 – Worker's Compensation Insurance (Defense Base Act)
- 52.228-4 – Worker's Compensation and War Hazard Insurance Overseas
- 252.228-7000 – Reimbursement for War Hazard Losses
- 252.228-7003 – Capture and Detention

252.225-7043 – Antiterrorism/Force Protection Policy for Defense  
Contractors Outside the United States  
252.209-7001 – Disclosure of Ownership or Control by the Government of a  
Terrorist Country

It is now Army policy that contracts providing support contractor personnel shall contain appropriate deployment guidance if those contracts have any likelihood of being used for support outside of the United States. Program Managers shall identify possible contingency system support scenarios and coordinate with contracting officers to ensure such contracts require support outside the United States. The Army must provide guidance to contractors so that their personnel will be prepared and available for rapid deployment to the Theater of Operations.

The references listed above provide a basis for understanding the motivation and intent behind this new policy. Appropriate contingency contract language can be found in the Department of Defense (DoD) Acquisition Deskbook Supplement: Contractor Support in the Theater of Operations. In addition to suggested contract language, the supplement also provides references.

All Program Managers must coordinate with their contracting officers to complete initial reviews of their current contracts, that require contractor support personnel for contingency operations, within 30 days of the date of this document. Furthermore, Program Managers must coordinate with their contracting officers to initiate modifications of each of those contracts to incorporate appropriate deployment language within 60 days of the date of this document.

Sincerely,

  
Claude M. Bolton, Jr.

Assistant Secretary of the Army  
(Acquisition, Logistics and Technology)

DISTRIBUTION:  
HEADS OF CONTRACTING ACTIVITY  
Administrative Assistant to the Secretary of the Army, 105 Army Pentagon,  
Washington, DC 20310-0105



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
HEADQUARTERS UNITED STATES ARMY FORCES COMMAND  
1777 HARDEE AVENUE SW  
FORT McPHERSON, GEORGIA 30330-1062

AFLG-PR (715-6a)

MEMORANDUM FOR DIRECTORS OF CONTRACTING

SUBJECT: National Institute for the Severely Handicapped (NISH) Overhead Charge in OMB A-76 Commercial Activity (CA) Studies

1. Recently a question has arisen over NISH proposal costs. At issue is whether or not the usual four percent overhead charge should be included in the NISH bottom-line price in a Commercial Activities (CA) Study. NISH can participate in a CA Study either by direct conversion or by "head-to-head" cost comparison against the government's Most Efficient Organization (MEO) price.


a. In direct conversion commercial activities studies, the four percent overhead charge is added to the fair market price to fund the NISH programs and it is included in the proposal price.

b. In head-to-head competition commercial activity studies, NISH has contended that the 4 percent overhead charge should either be excluded from their proposal price that is compared with the government MEO or added to the government's MEO to "level the playing field" for purposes of cost comparison. Then, if NISH were to win the competition, the total cost of the contract would include the four percent overhead charge.

c. Since the four percent is a cost to the government under a NISH contract, it should be included in their proposal price. In a competitive environment, the NISH proposal price, including the four percent, must be ten percent lower than the government MEO to win the cost comparison. It is not a requirement for the government to include the four percent cost as part of the MEO.

2. This position was coordinated with the FORSCOM DCSPIM and OSJA, as well as with the subject matter point of contact in ASA(ALT). They coordinated with ACSIM and DoD.

3. For additional information, contact Ms. Bonnie Kennedy at DSN 367-5602 or email: [bonnie.kennedy@us.army.mil](mailto:bonnie.kennedy@us.army.mil).



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